

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	CHOMIK, Richard; YOHO, Mark; STUART, Leslie; KIM, Taek; PETRI, Aidan, and SEJNOWSKI, Joe	Art Unit:	TBA
Serial No.:	TBA	Examiner:	TBA
Filed:	Current Herewith		
For:	WASTE STORAGE DEVICE		

Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**INVENTOR'S DECLARATION**

I, Richard Chomik, declare that:

(1) I am an applicant in the above-indicated application;

(2) From a time prior to the redacted date of Exhibit A until July 11, 2003, I was involved in the development project at Playtex involving improvements to the Diaper Genie®, which is a waste disposal device including a cartridge of flexible tubing.

(3) As set forth below, I invented the subject invention of U.S. Patent No. 6,612,099B2 prior to May 2, 2001, the earliest possible effective filing date of U.S. Patent No. 6,612,099 B2 (with respect to subject matter disclosed in U.S. Provisional Patent Application No. 60/288,186).

(3) In support of statement (2), I hereby submit the following evidence in conjunction with my statements:

a. Excerpts from a true and correct copy of a document entitled "Playtex Products: Improved Diaper Genie – Phase One Review Summary" ("Exhibit A") (which was directed to my attention and which I recollect reviewing at the time), the date of which has been redacted for purposes of the interference being sought but is before the May 2, 2001 the earliest possible effective filing date of U.S. Patent No.

6,612,099 B2, and the dates delineated in respect of Exhibits B, C and D (which can be seen to be dated before May 2, 2001);

b. Excerpts from a true and correct copy of a document entitled "Diaper Genie Next Generation Functionality Concepts," dated January 9, 2001 ("Exhibit B") (which was prepared by me and which I recollect transmitting to the persons listed on Interoffice Memo sheet), again which is before the May 2, 2001 the earliest possible effective filing date of U.S. Patent No. 6,612,099 B2;

c. Excerpts from a true and correct copy of a document entitled "Rough Review Agenda," dated February 8, 2001 ("Exhibit C") (which a I recollect having reviewed in the time period listed thereon); and

d. A true and correct copy of WO 02/083525 A1 published on October 24, 2002 ("Exhibit D"), before the issue date of U.S. Patent No. 6,612,099 B2 (issued September 2, 2003), seeking priority to U.S. Provisional Application 60/282,808 filed on April 10, 2001 naming me as an inventor.

(4) In respect of independent claims 1 and 56 of U.S. Patent No. 6,612,099 B2, which I understand corresponds or substantially corresponds to proposed Count 1, in my opinion each of the elements recited therein have correspondence in commercial Diaper Genies<sup>®</sup> that were sold prior to the earliest possible effective filing date of the application leading to U.S. Patent No. 6,612,099 B2, with the arguable exception of the type of rotation means specified in claim 1, viz., "a rotation mechanism arranged to rotate [the] retention mechanism" while the "cartridge is stationary" in order to "twist [the] tubing and encapsulate the waste package," and in claim 56, viz., a "rotation means for rotating [the] retention unit, and thus a waste package held by said retention unit, relative [the] cartridge in order to twist [the] tubing and encapsulate the waste package." I assert that Exhibit A, having a priority before the earliest possible effective filing date of U.S. Patent No. 6,612,099 B2, demonstrates that the applicant had conceived of a rotation mechanism that would rotate a retention mechanism while the cassette cartridge remained stationary in order to twist the tubing and encapsulate the waste package in the form of a "cartridge spinning mech. 'pull chord'" (p. 11, "#3 Purple"), and a battery-powered rotation mechanism (p. 15). I believe these embodiments comprise the rotation means element asserted

in independent claims 1 and 56. Furthermore, the retention mechanism of WO 02/083525 A1 ("Exhibit D"), which claims priority to an application filed before the earliest priority date of U.S. Patent No. 6,612,099 B1 demonstrates a rotation means element as asserted in independent claims 1 and 56. I understand each of claims 2 – 46, and 57 – 72, respectively import this limitation. With respect to claim 36 which asserts a hamper in the waste container wherein the outer wall of the hamper comprises part of the waste container and the hamper is removable from the container, I note that such concept is clearly shown at M3 of Exhibit B.

(5) In respect of independent claim 47 of U.S. Patent No. 6,612,099 B2, which I understand corresponds or substantially corresponds to proposed Count 1, my opinion is that the only elements differing from the commercial embodiment of Diaper Genie® that was sold prior to the earliest possible effective filing date of the application leading to U.S. Patent No. 6,612,099 B2, are a "toothed member attached to [the] lid," a cartridge having a "gear rim," and a rotation mechanism "engaging with [the] toothed member and [the] gear rim during movement of [the] lid and comprising at least one gear arranged in [the] container for enabling the conversion of movement of [the] lid to rotational movement of [the] gear rim." Figure O-2 of Exhibit B demonstrates a rack and pinion mechanism that spins the cassette when the lid is closed. While not clearly indicated in such figure, I note Figure F2 of the same document demonstrates that the cassette may have a gear rim. In regard to claim 47 of the patent, I understand that claims 48 – 55 depend therefrom, and thus import this limitation.

(6) In respect of independent claim 73 of U.S. Patent No. 6,612,099 B2, which I understand corresponds or substantially corresponds to proposed Count 1, in my opinion the only elements differing from the commercial embodiment of Diaper Genie® that was sold prior to the earliest possible effective filing date of the application leading to U.S. Patent No. 6,612,099 B2 are the "retention mechanism comprising a gear rim" and the "rotation mechanism" which is said to engage with a toothed member attached to the lid and the gear rim of the retention mechanism "during movement of said lid" and which is specified to comprise "at least one gear for enabling the conversion of movement of said lid to rotational movement of [the] gear rim and thus [the] retention mechanism." I note that the retention clutch 270 in WO 02/083525 A1 (Exhibit D) is illustrated in Fig. 3 to have a gear rim, and that a toothed "rack gear" member 260 is attached to the lid (see, Fig. 3). In my opinion, it would have been obvious to one of ordinary skill in the art

to incorporate a gear between the toothed member and the geared retention mechanism of WO 02/0835345 A1, and such does not constitute a patentable distinction. In regard to claim 73 of the patent, I understand that claims 74 – 79 depend therefrom, and thus import these limitations.

(7) In respect of independent claim 82 of U.S. Patent No. 6,612,099 B2, from which claims 83 – 89 depend, which I understand corresponds or substantially corresponds to proposed Count 1, in my opinion the only elements differing from the commercial embodiment of Diaper Genie® that was sold prior to the earliest possible effective filing date of the application leading to U.S. Patent No. 6,612,099 B2, are a “rotation mechanism for rotating [the] retention mechanism relative to [the] cartridge in order to twist [the] tubing and encapsulate a waste package when held by [the] retention mechanism” and a “compacting means for compacting the waste packages.” As with respect to independent claims 1 and 56, I believe that Exhibit A, having a priority before the earliest possible effective filing date of U.S. Patent No. 6,612,099 B2, demonstrates that at the very least the applicant had conceived of a “cartridge spinning mech. ‘pull chord’” (p. 11, “#3 Purple”), and a battery- powered rotation mechanism (p. 15) that would rotate the retention mechanism while the cassette cartridge remained stationary in order to twist the tubing and encapsulate the waste package. Furthermore, the retention mechanism of WO 02/083525 A1 (“Exhibit D”) which claims priority to an application filed before the earliest priority date of U.S. Patent No. 6,612,099 B1 demonstrates such a mechanism. A compacting means, as also asserted in claim 82, is seen in Exhibit B at U19 as comprising a pair of rollers through which the waste packages pass. As such, the subject matter of claim 82 was clearly conceived by the applicant prior to the earliest possible effective filing date of the application leading to U.S. Patent No. 6,612,099 B2.

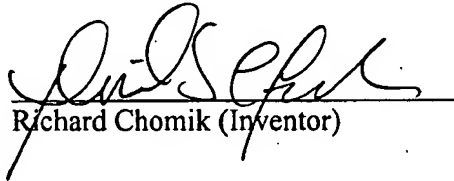
(8) I diligently worked on perfecting the mechanical and electro-mechanical rotation mechanisms for automatically sealing the waste packages as indicated by Exhibit E setting forth drawings of several automated twist seal embodiments which were being considered in 2002 at Playtex, and Exhibit F comprising (a) notes dated June 17, 2001 in a bound book which I transcribed regarding my query whether batteries should be used to cause a self twist; (b) notes dated November 12, 2002 in which I suggested the need to ensure that a mechanical auto twist mechanism that I was working on returned to the bottom of the waste disposal device on

actuation; and (c) notes dated 5/15/03 in which I suggested a single motor being attempted for forward driving the twist and reverse driving a plunger.

(9) On September 2, 2003, a U.S. Provisional Application 60/499,443 was filed asserting electromechanical methods for turning the cassette.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and the such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signed at Orlando, Florida this 5<sup>th</sup> day of November, 2003.

  
Richard Chomik (Inventor)